

**WAUKESHA COUNTY
MINUTES OF THE PARK AND PLANNING COMMISSION
THURSDAY, MAY 18, 2006**

CALL TO ORDER

Pat Haukohl, Secretary, called the meeting to order at 1:00 p.m.

Commission	Pat Haukohl	Betty Willert	Robert Hamilton
Members Present:	Gary Goodchild	Walter Kolb	

Commission		
Members Absent:	Walter Baade	Ellen Gennrich

Staff

Members Present:	Richard L. Mace, Planning and Zoning Manager
	Elfriede Sprague, Clerk III
	Kathy Moore, Senior Planner
	Debbie Price, Asst. Corporation Counsel

Guests Present:	Claudine Setzke	Scott Bence	Brian Turk
	Charles Setzke	Gary Lake	Atty. Hammes
	Dennis Lutynski	Rodney Scheckel	Bruce Marne
	Becky Lutynski	Charles Leitermann	Tim Lynch
	Rosemary – St Paul’s Church		Rebecca Roeker
	David Domoian		

CORRESPONDENCE: Minutes from the April 20, 2004 Town of Brookfield Annual Meeting (Mailed)

A letter and Resolution from Claudine Setzke was distributed.

MEETING APPROVAL: None

MINUTES: None

PUBLIC COMMENT:

In the absence of the Chair, Secretary Pat Haukohl assumed the Chairmanship. She asked if anyone from the audience wished to address the Commission? There being no one she, she moved to the next item on the agenda

• **ZT-1619 (Text Amendments) Town of Mukwonago**

Mr. Mace presented the “Staff Report and Recommendation” dated May 18, 2006, and made a part of these Minutes. He indicated the proposed request includes Text amendments to Section 3.08(1), (2) and (3) of the Town of Mukwonago's Zoning Ordinance regarding Conditional Use procedures and terminations.

After discussion, Mr. Hamilton moved, seconded by Mrs. Willert and carried unanimously for approval, in accordance with the “Staff Report and Recommendation”.

- **ZT-1620 (Text Amendments) Town of Mukwonago**

Mr. Mace presented the “Staff Report and Recommendation” dated May 18, 2006, and made a part of these Minutes. He indicated the proposed request includes Text amendments to the Town of Mukwonago's Zoning Ordinance to repeal and recreate Section 3.04 (2) as it pertains to lots being created which do not abut a public road for the full width requirement.

Mrs. Moore explained the Town of Mukwonago currently does not allow the creation of new parcels, which are considered flag lots or are created on private easements. It requires that all lots must abut a public road for the full width requirement of the particular zoning district; recently however, this provision has become an issue in trying to implement the Town's Park and Open Space Plan or the Waukesha County Development Plan Park and Open Space Element. Sometimes it may be necessary to create flag lots or lots on easements when the public body only wants to purchase a portion of a property which does not abut a public road. Public agencies typically do not want to purchase improvements on properties and try to parcel off environmentally significant areas, however they do not always have public road frontage. This exception to the Ordinance is to allow the creation of new parcels if they help to implement the Park and Open Space Plan

After discussion, Mrs. Willert moved, seconded by Mr. Goodchild and carried unanimously for approval, in accordance with the “Staff Report and Recommendation”.

- **ZT-1621 (Rodney and Lori Scheckel) Town of Mukwonago, Section 14**

Mr. Mace presented the “Staff Report and Recommendation” dated May 18 2006, and made a part of these Minutes. He pointed out the location of the property at W299 S8598 S.T.H. 83 in the Town of Mukwonago and stated the petitioner is requesting a rezone from the R-H Rural Home District to the A-1 Agricultural District.

Mr. Mace explained the Scheckel's own a 6.2-acre parcel that is currently zoned R-H Rural Home District, which requires an accessory structure to be 50 ft. from the lot line. They are proposing to build a 1,600 sq. ft. accessory structure and are requesting a rezoning to the A-1 Agricultural District, which allows a 20 ft. offset from the lot line. Mrs. Haukohl questioned why the structure needed to be located so close to the lot line, as it is a very large parcel? Mrs. Moore answered that due to the location of the home, the loss of frontage when Hwy. 83 construction commences, the septic area and physical restraints on their property, i.e. wetland setbacks, Environmental Corridor and steep slopes, it is not feasible to locate the structure elsewhere. The rezoning is conditioned so as not allow any subsequent division of the parcel.

After discussion, Mr. Goodchild moved, seconded by Mr. Kolb and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

- **CZ-1566 (Flemma Development Group, LLC) Town of Vernon, Section 4**

Mr. Mace presented the “Staff Report and Recommendation” dated May 18 2006, and made a part of these Minutes. He pointed out the location of the property on the west side of C.T.H. “XX” (Oakdale Dr.), northwest of Mill Brook Village Subdivision, Town of Vernon, approximately 1/8 mile south of the Town of Vernon and Town of Waukesha line. He stated the petitioner is requesting a rezone from the RRD-5 Rural Residential Density District 5 and C-1 Districts to the R-1 Residential District for the purpose of creating a residential development.

Mrs. Haukohl noted the development was dealing with a lot of water issues. She questioned the soils and the recharge areas. Mrs. Moore replied that per the new Stormwater Ordinance, the better soils are now being used for infiltration ponds, leaving the marginal soils for development. This will be happening more and more in the County, as many of the prime sites have already been developed. Mrs. Haukohl asked if this was a recharge area? Mr. Mace replied, "No". Mr. Goodchild asked why the septic systems were required to be preinstalled? Mrs. Moore replied, "Because of the grading that has to go on, which is a Conditional Use." The area contains hydric soils and high ground water tables. There is concern that during the grading and filling process the septic sites will be destroyed and become unbuildable. They are being fenced off for the purpose of avoiding that problem.

Mr. Goodchild questioned whether any prebuilt mound systems, which go unused for 10 to 12 years, would need to be rebuilt? Mr. Mace indicated the Environmental Health Division has required their installation and should not be required to be rebuilt. He felt the systems would not be compromised. Mrs. Willert questioned whether marking off the sites would prevent them from being driven across? Mrs. Moore replied not all of the lots will have preinstalled septic sites, and it will be the developers and owners responsibility to preserve them. Mrs. Haukohl asked if there would be any septic sites in the Corridor? Mrs. Moore responded, "Our Ordinance doesn't allow it". Mrs. Willert noted the majority of the Environmental Corridor was contained in the outlot. Mrs. Moore detailed the area on the plat and said the building envelopes would be outside of it. Mrs. Haukohl asked if the Master Grading Plan had building pads on it? Mrs. Moore replied, "Yes", in addition to showing the final grade, it shall locate the basement floor level, the garage floor and the first floor elevations on all building sites and the location of all proposed septic systems.

Mr. Hamilton questioned Wisconsin Testing Laboratories report recommending that prior to the placement of fill in the building pad areas, all topsoil be removed and the grade should be checked for pockets of soft material at shallow depths. Mrs. Moore replied that soils tests will need to be conducted to verify basement elevations, as there were differences in the original soils reports. It is a condition of approval for the Conditional Use. It was agreed the rezoning was heavily conditioned and would address the issues of the development.

After discussion, Mr. Kolb moved, seconded by Mr. Goodchild and carried unanimously for approval, as conditioned, in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **SCU-1424 (Flemma Development Group, LLC) Town of Vernon, Section 4**

Mr. Mace presented the "Staff Report and Recommendation" dated May 18 2006, and made a part of these Minutes. He pointed out the location of the property at on the west side of C.T.H. "XX" (Oakdale Dr.), northwest of Mill Brook Village Subdivision, Town of Vernon, approximately 1/8 mile south of the Town of Vernon and Town of Waukesha line and stated the petitioner is requesting Conditional Use approval for earth-altering activities in conjunction with CZ-1566 to accommodate a residential subdivision development and preplanned house pads.

Mr. Hamilton asked when the grading and inspecting were completed; if there was a way to certify the persons responsible for each have met the conditions? Mr. Mace answered a condition could be added to do so and agreed to amend Conditions No. 12 and 13 of the Staff Report and Recommendation to reflect his concerns. Mrs. Haukohl questioned the berm on the plan. Mr. Turk replied it was part of the Grading Plan and is intended to convey storm water down the ditch line into the retention pond and was not intended to be decorative.

After discussion, Mr. Hamilton moved, seconded by Mrs. Willert and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation” with an amendment to Conditions No. 12 and 13 to now read:

- 12. The Master Grading Plan must be completed and certified by the Developers Engineer and submitted to the Planning and Zoning Division Staff, prior to the issuance of any Zoning Permits for residences on lots within this development.*
- 13. The recommendations made for soil compaction by Wisconsin Testing Laboratories, LLC dated September 26, 2005 must be submitted to and approved by the Town Engineer. Prior to approval of the Final Plat, certification from the Developers Engineer shall be submitted to the Town Planner and the Planning and Zoning Division Staff that the filling and soil compaction has occurred in accordance with the Wisconsin Testing Laboratories report dated September 26, 2005.*

The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• CU-0004 (Dennis Lutynski/Skydance Pet Lodge aka Skydance Kennels) Town of Ottawa, Section 34

Mr. Mace presented the “Staff Report and Recommendation” dated May 18, 2006, and made a part of these Minutes. He pointed out the location of the property at W367 S5519 S.T.H. 67, Town of Ottawa on the aerial photograph and stated the petitioner is requesting Conditional Use approval to expand the commercial dog kennel operation on the property to include additional kennels, parking, a two-story office area and a pool area.

Mr. Mace referenced the letter from the Waukesha County Humane officer dated March 16, 2006, indicating the operation is a well-run operation with absolutely no violations. She further wrote, “From a humane animal standpoint, I would not block his application to expand his business”. Mrs. Haukohl expressed concern about the water from washing down kennels running into the Environmental Corridor. Mr. Lutynski replied the Corridor is not near that area. Waste management procedures will be in accordance with DNR rules. Mr. Hamilton questioned why the dogs would not be allowed outside during canoe trips? Mr. Goodchild replied the DNR wanted the dogs inside during scheduled outings at the campground so there would be no disturbance from barking; allowing the canoeists the ability to listen to the wildlife and birds.

After discussion, Mrs. Willert moved, seconded by Mr. Goodchild and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• PO-06-OTWT-1 (Dennis Lutynski/Skydance Pet Lodge aka Skydance Kennels) Town of Ottawa, Section 34

Mr. Mace presented the “Staff Report and Recommendation” dated May 18, 2006, and made a part of these Minutes. He pointed out the location of the property at W367 S5519 S.T.H. 67, Town of Ottawa on the aerial photograph and stated the petitioner is requesting a Site Plan/Plan of Operation in conjunction with CU-0004A to expand the commercial dog kennel operation on the property to include additional kennels, parking, a two-story office area and a pool area.

After discussion, Mrs. Willert moved, seconded by Mr. Goodchild and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

- **CU-167B (REV Motorsports/Charles Leitermann) Town of Vernon, Section 19**

Mr. Mace presented the “Staff Report and Recommendation” dated May 18, 2006, and made a part of these Minutes. He pointed out the location of the property at S90 W27545 National Ave., Town of Vernon on the aerial photograph and stated the petitioner is requesting to amend an existing Conditional Use to permit a motor sports sales (motorcycles, scooters, all-terrain vehicles, and personal watercraft) and service operation.

Mrs. Willert asked Mr. Leitermann whether he would be doing any outside vehicle testing? He answered some testing would be required during points in reconditioning and is very aware of not creating nuisance noise. He added he has been in the business for 20 years and it has not been a problem. Mrs. Willert noted Condition No. 11 of the Staff Report addressed the nuisance concerns.

After discussion, Mr. Hamilton moved, seconded by Mr. Goodchild and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioner a reasonable use of his land and meets the intent and purposes of all County Ordinances

- **PO-06-VNT-6 (REV Motorsports/Charles Leitermann) Town of Vernon, Section 19**

Mr. Mace presented the “Staff Report and Recommendation” dated May 18, 2006, and made a part of these Minutes. He pointed out the location of the property at S90 W27545 National Ave., Town of Vernon on the aerial photograph and stated the petitioner is requesting a Site Plan/Plan of Operation in conjunction with CU-167B to permit a motor sports sales (motorcycles, scooters, all-terrain vehicles, and personal watercraft) and service operation.

After discussion, Mr. Goodchild moved, seconded by Mrs. Willert and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioner a reasonable use of his land and meets the intent and purposes of all County Ordinances.

- **SCU-1366 (Steve Traudt/Mallard's Landing Condominiums) Town of Brookfield, Section 29**

Mr. Mace presented the “Staff Report and Recommendation” dated May 18, 2006, and made a part of these Minutes. He pointed out the location of the property on the east side of Barker Road, north of the Elite Tennis and Racquetball Club, Town of Brookfield on the aerial photograph and stated the petitioner is requesting Conditional Use approval for the construction of eight condominium units in four buildings.

Mr. Mace commented Mr. Traudt had completed the rezone process and was unable to apply for a Conditional Use Permit, as several issues needed to be resolved first. The DNR had located a stream on the property, which created the need to modify the original plans. The revised plan has removed the retaining wall and lowered the building to the east (Units 7 and 8), thus eliminating the walkout basement. Unit 8 has a deck, which extends into the 75' floodplain setback area and will be subject to a revised Site Plan being submitted.

Mr. Tim Lynch, RSV Engineering, presented the building plans. He asked whether the deck could be cantilevered out on Units 7 and 8, so that any posts would be sunk outside the 75' setback? Mr. Mace replied, "No", the deck will need to be reconfigured. Mrs. Haukohl asked for a clarification on a condition of approval. Mr. Mace replied it is conditioned upon complying with the Grading and Drainage Plan dated May 15, 2006. It is further conditioned upon the submittal of a revised Site Plan showing Unit 8's relocated deck. She asked if there was a previous Site Plan? Mr. Mace replied there was and would change the Staff report to say, "Grading and Drainage Plan and Site Plan dated May 15, 2006". However, since the writing of the Staff Report, a revised plan had been submitted removing the deck from the floodplain.

After discussion, Mr. Hamilton moved, seconded by Mr. Goodchild and carried unanimously for approval, as conditioned, in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **CU-275E (St. Paul's Catholic Church) Town of Genesee, Section 16**

Mr. Mace presented the "Staff Report and Recommendation" dated May 18, 2006, and made a part of these Minutes. He pointed out the location of the property S38 W31602 C.T.H."D" on the northwest corner of Hwy. 83 and C.T.H. D, Town of Genesee on the aerial photograph and stated the petitioner is requesting Conditional Use approval to construct an addition to an existing church.

Mr. Mace commented St. Paul's Church has operated under a Conditional Use Permit since 1963. They are proposing to raze the existing church and rectory building and build a new sanctuary. They are also proposing an expansion and renovation. A Variance has been applied for and granted for a setback waiver and also from the height requirement for the spire/belfry. The intent is to use the same foundation and add to it.

Mr. Bruce Marne, Eppstein Uhen Architects, and Rosemary from St. Paul's Church presented a Site Plan of the new church and expansion. Mrs. Haukohl asked if they had any concerns regarding meeting the conditions of approval? They indicated no. She noted that a new septic system needed to be approved. Mr. Marne replied a new system has been designed and the plans have been submitted. They anticipate final approval in a few days.

After discussion, Mr. Hamilton moved, seconded by Mr. Kolb and carried unanimously for approval, as conditioned, in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **PO-06-GNT-13 (St. Paul's Catholic Church) Town of Genesee, Section 16**

Mr. Mace presented the "Staff Report and Recommendation" dated May 18, 2006, and made a part of these Minutes. He pointed out the location of the property S38 W31602 C.T.H."D", Town of Genesee on the aerial photograph and stated the petitioner is requesting a Site Plan/Plan of Operation in conjunction with CU-275E to construct an addition to an existing church.

After discussion, Mr. Hamilton moved, seconded by Mrs. Willert and carried unanimously for approval, as conditioned, in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **SCS-195A (K C Kettle Ridge Farms) Town of Genesee, Sections 27 and 34**

Mr. Mace presented the “Staff Memorandum” dated May 18, 2006, and made a part of these Minutes. He pointed out the location of the property W302 S5348 S.T.H. 83, Town of Genesee on the aerial photograph and stated the petitioner is requesting approval of the creation of a lot without direct access to a public road.

Mrs. Roecker explained the main purpose of the request was to approve an easement between Lots 1 and 2, which would be for the benefit of Lot 1, as it does not have direct frontage on a public road. The proposed Certified Survey Map has been designed so that a developer could purchase Lot 2 (33 acres) and divide it in accordance with the approved Preliminary Plat of Kettle Ridge Farms. Towards this end, the access to Lot 1 would be via a 66’ wide ingress and egress easement from S.T.H. 83, to be located along the southeast lot line of Lot 1. Direct vehicular access from Lot 1 to S.T.H. 83 would be prohibited. The proposed easement matches the configuration of a proposed public road (Kettle Ridge Court) on the Preliminary Plat of Kettle Ridge Farms. It is anticipated that the ingress and egress easement would become a public road when Lot 2 is further divided. Mr. Goodchild asked who would be responsible for the cost of developing the easement in the future if it becomes a public road? Mrs. Roecker replied it would be the responsibility of the developer of Lot 2. Her understanding is the current owner, Red Wing Land Co., intends to sell the parcels. The next owner may not choose to do any further subdividing, but keep it as a large parcel. The easement would provide for either possibility. A Driveway Maintenance Agreement will be submitted and recorded in the Register of Deeds office. Mrs. Roecker wished to clarify that in regard to Condition No. 4 of the Staff Memorandum, the Town has already approved the Driveway Maintenance Agreement as part of their approval of the Certified Survey Map. Mr. Goodchild felt that if the immediate intent was not to subdivide Lot 2, Lot 1 and Lot 2 should each have a 33’ driveway access. He felt that if Lot 1 were to be further divided in the future, it would be restricted without having its own road access. He questioned whether the existing driveway to the home would have to be moved to align with the easement? Mr. Mace believed there was only an outbuilding on the parcel, not a home. The Preliminary Certified Survey Map does not have any buildings located on it and felt building locations would be required to be on the Certified Survey. He stated the request before the Commission is approval of a lot without direct access to a public road. If a future division of Lot 1 was allowed, the easement would have to become a public road and access would be provided off of it.

After discussion, Mrs. Willert moved, seconded by Mr. Kolb and carried with 4 yes votes (Mr. Goodchild voted no) for approval, as conditioned, in accordance with the “Staff Memorandum”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **Established Road Right of Way Width Reduction (Venice Beach Road) Town of Summit, Section 24**

Mr. Mace presented the “Staff Memorandum” dated May 18, 2006, and made a part of these Minutes. He pointed out the applicable location on Venice Beach Road, located in the NE ¼ of Section 24, Town of Summit on the aerial photograph.

Mr. Mace stated the petitioner is in the process of developing two lots on Venice Beach Road and is requesting approval to reduce the width of the established road right of way of Venice Beach Rd. from 66 ft. to its platted width of 50 ft. The waiver would also serve to reduce the number of detached garages and residences on Venice Beach Road that are located within the established road right-of-way. A 50 ft. right of way width will provide ample room for future road improvements and access for emergency vehicles.

After discussion, Mr. Goodchild moved, seconded by Mrs. Willert and carried unanimously for approval, in accordance with the “Staff Memorandum”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **Established Road Right of Way Width Reduction (Lake Drive) Town of Eagle, Section 35**

Mr. Mace presented the “Staff Memorandum” dated May 18, 2006, and made a part of these Minutes. He pointed out Lake Drive, located in the NE ¼ of Section 35, Town of Eagle, east of a street platted as Hotel Dr. in the Plat of W.H. Tuohy's Subdivision and the south line of the subdivision plat of Eagle Springs Addition on the aerial photograph and stated the petitioner is requesting approval to reduce the width of the established road right of way of Lake Dr. from 66 ft. to 20 ft.

Mr. Goodchild commented he has viewed the site and the road in question is used as a driveway, ending at the residence. There is a road to the west that is used by the public. Mr. Mace added the road in question was platted in 1925 and has not been constructed or used by the public. Mr. Hamilton asked, “Why not just vacate the road?” Mr. Mace replied the lots would become non-conforming parcels on a private driveway, creating more problems. Reducing the width to 20 ft. would place them on a public right-of-way. Mrs. Haukohl asked, “If a 20 ft. right of way would be sufficient for emergency vehicles?” Mr. Mace replied such vehicles could use the improved road to the west to access the other parcels.

After discussion, Mr. Kolb moved, seconded by Mr. Hamilton and carried unanimously for approval, as conditioned, in accordance with the “Staff Memorandum”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **(J.B.J. Development Company) Town of Brookfield, Section 29**

Mr. Mace presented the “Staff Memorandum” dated May 18, 2006, and made a part of these Minutes. He pointed out the location of the property in NE ¼ of the SW ¼ of Section 29, Town of Brookfield on the aerial photograph and stated the Waukesha County Board of Supervisors, at their meeting of March 28, 2006, referred the matter back to the Park and Planning Commission for clarification regarding issues raised from nearby residents regarding the 2006 Waukesha County Development Plan amendment.

Mrs. Haukohl stated that at the March 28, 2006 County Board meeting, they referred the matter back to the Park and Planning Commission to determine if “What was discussed at the annual Town meeting and what was promised or sold to the people who attended that meeting, when they voted to sell the land was the same thing that we were hearing or saw in the paper.” Mr. Mace replied he has since listened to all the tapes the Town gave him (both the 2004 and 2006 annual meetings) and reviewed the minutes. In his opinion, there was very little left out in the written minutes and was satisfied that they were reflective of the actual meeting. In regard to the RM-2 zoning, he indicated that Atty. Hammes had referenced two different building projects, however they predated the new RM-2 zoning, which was amended in 1986 and could therefore not be used as a reference to justify mapping the RM-2 Category adjacent to single-family developments. He further indicated that under the Conditional Use provisions of Section 17.02(14)(B)(3)(C), more than eight dwelling units per structure can be authorized pursuant to issuance of a Conditional Use Permit. He felt it would be very difficult to map a parcel in the Town as RM-2 without being adjacent to a residential property along at least one property line. Based upon his review of the tapes and minutes of the two annual meetings, he found no record that there was a specific mandate to limit the number of units in 2004 to 50 or 55, or to any number for that matter. The motion, which was presented in 2004, was for the sale of the land only, with no conditions. It passed with a majority vote. There was speculation about the potential number of units and there was also discussion

about how many acres were developable, but there were no specific or detailed plans submitted that suggested that any one particular plan or the total number of units was the subject of the annual meeting vote in 2004. There was also some discussion regarding the desire of the Town's residents to limit the style to the two-story type as referenced by the Building Inspector, i.e. Toldt Woods, Brookfield Lakes, etc. There was another annual meeting and vote in 2006 and it passed again with a vote of 63 to 10, however there was a condition added restricting the development to 64 units. Based on these factors, he saw no reason to deviate from the Staff's previous recommendation. He felt the distance of the buildings from the residential homes and the extensive landscaping would serve to protect the neighboring properties from any perceived adverse impacts. Mr. Hamilton asked whether the land has been sold yet? Mr. Mace answered the purchase is contingent upon passing the amendment. The closing date for the contract is the end of July.

Mrs. Haukohl asked if a Conditional Use Permit was needed to allow any of the development to proceed? Mr. Mace replied a permit is required for this project because it exceeds 8 units per structure. The Conditional Use will not be reviewed at the County level, as it was determined we no longer have shoreland jurisdiction. She asked what the process would be if the Commission voted on the matter? Mr. Mace replied it would go back to LUPE and then the County Board. She was concerned with the change LUPE made regarding access to Elizabeth Court. The Commission had originally added the condition concerning gating Elizabeth Court. Mr. Goodchild felt the plans for the condominiums were aesthetically pleasing with plenty of green space and would fit the site without causing any negative impact on the neighbors.

Atty. Price questioned whether the Commission should have to interpret the intent of a Town meeting. She said the Town has taken a formal action and the Commission has been presented with the Development Plan Amendment, they need to move the matter forward and vote, acting on that action. The legal issue is whether they approve the Development Plan Amendment or not. Many of the issues that have arisen, need to be addressed under the Conditional Use provisions of the Town.

Mr. Mace added the reason County Board sent the matter back before the Commission is because of what was raised in the letter sent by Mrs. Setzke to the County Board, regarding what was and what not said at the Town's meeting and the Board directed Staff to review that matter. He has reviewed the tapes and minutes and there were no conditions in the vote in 2004 and as presented in the Staff Memorandum. Mr. Hamilton asked if the Plan Amendment, which was passed in 2005, was conditioned? Mr. Mace replied, "Yes." He then asked, "If the zoning change that was enacted at the time was consistent with the Land Use Plan?" Mr. Mace replied, "Yes, it was. There was also a zoning change to modify the shoreland area and to approve the Town's Ordinance, that they submitted for our action". However, its approval was based upon the fact that shoreland jurisdiction was in place throughout the entire property. The shoreland jurisdiction has been removed due to a determination by the DNR. Atty. Price clarified that at this point, the last zoning amendment made by the County with the conditions, is still in effect.

Atty. Hammes felt it was inappropriate to place conditions on the 2005 Land Use Amendments. It was because of the need to amend them in 2006 that this situation has arisen. He also wished to clarify the agenda as it states the request is from J.B.J. Development, however the request is from the Town, as they have a contract to sell the property that is contingent on changing the Land Use Plan. He related that when the County Board sent the request back to the Commission in March, the Town decided to have another annual meeting with discussion and vote, to confirm the Town's authority to sell the land, and it passed with a condition restricting the proposal to 64 units. He felt this was a clear indication the matter was resolved with a majority vote of 63 to 10. He added that the residents would have another opportunity to speak on this particular development, as the Town Board has not approved a specific

development plan. A Conditional Use Permit needs to be granted. He encouraged the Commission to move the request forward, as time is critical and this matter has been tied up for two years.

Mrs. Setzke presented her reasons for opposing the RM-2 zoning. (Letters and Petition on file) She felt the residents were misled at the 2004 annual meeting. There was a section of the tape where Mr. Zopp says, "As we present it here", which was the 37 unit presentation. The neighbors are opposed to the RM-2 zoning and are willing see RM-1 instead. She felt the RM-1 zoning would safeguard them now and in the future, if the parcel were to be sold to a different developer. They are extremely concerned about the zoning and the height of the proposed condominiums.

Mr. Setzke commented on his view of the Town meeting when the developer presented a conceptual plan and the residents voted based on that plan. The minutes do not reflect the presentation. He felt the Town was self-serving and the residents were misled. Mr. Hamilton replied that these issues are with the Town and not the County. The Commission is not discussing a zoning change; it is discussing an amendment to the County Development Plan that was referred back to the Commission. Mr. Mace said the Commission needs to either accept or reject the 2006 plan amendment, which is asking to remove some conditions, the most important one being the number of units, or the Commission can stay with what was approved in 2005.

Atty. Price stated this request is before the Commission because it was remanded from the County Board to "discover what happened at these Town Board meetings." Mr. Mace has made that determination and given us his report. It needs to be forwarded to LUPE with the finding that the Commission would do nothing differently with respect to what the Town presented in their Plan Amendment. She agreed the residents have concerns and issues with the Town, however they need to be addressed at the Town level. The Commission cannot solve the problems that may be perceived at the Town level.

Mr. Scott Bence commented that as a developer, he is totally satisfied with the recommendation as presented by the LUPE Committee to the County Board. He is looking for the Commission to reaffirm LUPE's recommendation.

After discussion, Mr. Kolb moved, seconded by Mr. Goodchild to reaffirm the previous Land Use, Parks and Environment Committee action and forward the matter back LUPE to for their recommendation to the County Board of Supervisors.

Mrs. Haukohl moved to amend the motion to add back the original Park and Planning Commission restriction stating, "....The access to Elizabeth Court be gated for emergency purposes only". The motion died for lack of a second.

Mr. Hamilton called the question. The motion passed 4 to 1, with Mrs. Haukohl voting no.

The approval of this request, as conditioned, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **(Douglas Kincaid) Towns of Mukwonago and Genesee, Sections 3 and 34**

Mr. Mace presented the "Staff Memorandum" dated May 18, 2006, and made a part of these Minutes. He pointed out the location of the property in part of the NW ¼ of the NW ¼ of Section 3, Town of Mukwonago and the SW ¼ of Section 34, Town of Genesee on the aerial photograph and stated the petitioner is requesting a waiver under Section 9 of the Waukesha County Shoreland and Floodland Subdivision Control Ordinance, from the definition of a minor land division, which requires that the residual parcel be located on the Certified Survey Map.

Mr. Mace explained the applicant is proposing to sell a three-acre parcel of his 34-acre parcel, 2.1 acres of which is located in the Town of Genesee and 0.9 acres is located in the Town of Mukwonago. As part of this proposal, he is proposing to use his existing driveway access to Road X, which is proposed to be a common driveway access. The Town of Mukwonago does not allow the creation of new parcels on easements. It is not physically possible to get a driveway to the residence from that remaining road frontage to the east in the Town of Genesee because of the steep terrain, an old quarry and the fact that the Town of Mukwonago does not allow driveway grades more than 13%. The planners from the two communities suggested the applicant create a new three-acre parcel located partially in the Town of Genesee and the Town of Mukwonago and use the existing common driveway access for both parcels to eliminate the easement situation and allow the residents to maintain their existing driveway. Mrs. Haukohl asked if there was a Driveway Agreement? Mr. Mace replied, "Not yet, however there will be one when he sells the parcel." The applicant is asking that the entire parcel, most of which is located in the Town of Mukwonago not be required to be on the Certified Survey Map. A restriction is going to be placed on that property that it cannot be subsequently divided and Mr. Kincaid has agreed to it.

After discussion, Mrs. Willert moved, seconded by Mr. Kolb and carried unanimously for approval, in accordance with the "Staff Memorandum". The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

ADJOURNMENT

With no further business to come before the Commission, Mr. Hamilton moved, seconded by Mrs. Willert to adjourn at 4:05 p.m.

Respectfully submitted,

Pat Haukohl
Secretary

PH:es